Re-examining Desegregation of Elementary and Secondary Schools: Social Policy and the United States Supreme Court

An Honors Thesis (POLS 404)

by

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Abstract

The Supreme Court declared that the segregation of elementary and high school was unconstitutional in 1954, through its famous decision in *Brown v. Board of Education of Topeka I*. This decision changed the way America viewed race and the Supreme Court itself.

Through its decision, the Court believed that the time was right to end segregation. That decision was an attempt to initiate social policy; unfortunately, the Court's decisions don't implement themselves. That responsibility lies with the other two branches of the federal government, the legislature and the executive, as well as with the states. As the nation progressed, the Supreme Court faced actions that resisted desegregation, such as the incident in Little Rock, Arkansas, in 1957, and reactions by various groups resulted in the passage of the Civil Rights Act of 1964. While the Supreme Court continues to stand by its decision, the nation continues to debate the issue. I analyze school desegregation cases and show that the Supreme Court's power only extends so far before it must rely on other branches of our government.

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When the Supreme Court declared that the segregation of elementary and high schools was unconstitutional in 1954, it changed the way that America viewed race and the Supreme Court itself.

Through its decision in *Brown v. Board of Education of Topeka I*,[1] the Court believed that the time was right to end segregation. That decision was an attempt to initiate social policy; unfortunately, the Court's decisions don't implement themselves. That responsibility lies with the other two branches of the federal government, the legislature and the executive, as well as with the states. As the nation progressed, the Supreme Court faced factions that resisted desegregation, such as the incident in Little Rock, Arkansas, in 1957, and that action resulted in the case of *Cooper v. Aaron*[2] that was heard in front of the Supreme Court. The Governor of Arkansas attempted to prohibit African-American students from entering a public high school. President Eisenhower ordered federal troops to protect the students while they attended the high school. Reactions by various groups resulted in the passage of the Civil Rights Act of 1964.[3] While the Supreme Court continued to stand by its decision, the nation continued to debate the issue. This thesis focused upon school segregation, but segregation is not easily defined.

Segregation comes in two forms: *de jure* segregation and *de facto* segregation. According to Black's Law Dictionary, *de facto* segregation is, "Segregation which is inadvertent and without assistance of school authorities and not caused by any state action but rather by social, economic and other determinates".[4] On the other hand, *de jure* segregation is defined as: "Segregation directly intended or mandated by law or otherwise issuing from an official racial classification or in other words to segregation which has or had the sanction of law".[5] For the purpose of this paper, I will only be dealing with Supreme Court cases in which *de jure* segregation was in question. A discussion of segregation is not complete without first looking at

the Fourteenth Amendment, and its focus of the equal protection of the laws. This is an integral part of our discussion.

The Fourteenth Amendment of the United States Constitution establishes the idea of the equal protection of the law:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*[6]

An examination of this amendment is necessary because the state cases involved with school desegregation used the Fourteenth Amendment as their bases for claiming discrimination. Indeed, the Court granted certiorari to all the state cases discussed based on the plaintiff's claim of discrimination under the Fourteenth Amendment. In order to understand the Court's reasoning in *Brown v. Board of Education of Topeka I*,[7] one must first examine the case of *Plessy v. Ferguson*,[8] in which the Court established the "separate but equal" doctrine that became the basis for all racial discrimination cases until 1954.

In 1890, the legislature in Louisiana enacted a statute that required railroad companies to provide equal, but separate, accommodations for whites and African-Americans. In addition, the law made it a criminal offense for any person to insist on occupying a seat reserved for a passenger of the other race. Plessy, only one-eighth African-American and seven-eighths white, refused to give up a seat reserved for a white passenger. During his trial, Plessy petitioned the Louisiana State Supreme Court to enjoin the trial judge from continuing the proceedings against him. When the court rejected his petition, Plessy brought his case to the U.S. Supreme Court on a writ of error. Plessy argued that the law violated the guarantees of the Thirteenth and Fourteenth Amendments.[9]

Writing the opinion for the Court, Justice Brown looked at each amendment that Plessy challenged. With regards to the Thirteenth Amendment, Justice Brown reasoned that the statute did not interfere with the abolition of slavery.

> Slavery implies involuntary servitude, - a state of bondage; the ownership of mankind as a chattel, or, at least, the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services.
>
> A statute which implies merely a legal distinction between the white and colored races … has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude. Indeed, we do not understand that the thirteenth amendment is strenuously relied upon by the plaintiff in error in this connection.[10]

Justice Brown then looked at the accusation that the Louisiana statute violated the Fourteenth Amendment. Brown reasoned that the intent of the amendment was to enforce the absolute equality of the races before the law, but it could not have been intended to abolish distinctions based upon race, or to enforce social equality. Laws that permitted or required the separation of the races did not necessarily imply the inferiority of either race, and they had been generally recognized as within the extent of the power of the state legislatures.[11] Justice Brown further reasoned that the Louisiana statute was a reasonable regulation, and that the state is at liberty to act with reference to established customs and traditions of the citizens.[12]

Justice Brown also discussed the underlying argument that the forced separation of the two races stamped the colored race with a feeling of inferiority. If this was the case, Brown reasoned, it was because "the colored race chooses to put that construction upon it."[13] He also reasoned that Plessy's argument assumed that social prejudices could be overcome by legislation and that equal rights could not be secured for the Negro race except by force, but Brown dismissed that proposition. "If the two races are to meet upon terms of social equality, it must be

the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals."[14]

Justice Harlan was the sole dissenting justice. In his dissent, Harlan argued that the constitution did not permit any public authority to know the race of those entitled to be protected by those rights. Further, "Such legislation as there here in question is inconsistent not only with that equality of rights which pertains to citizenship, national and state, but with the personal liberty enjoyed by every one within the United States."[15] Harlan further argued that our constitution is color-blind, and with respect to civil rights, all citizens are equal under the law. Finally, Harlan reasoned that we could not boast about the freedom enjoyed by our citizens, while we continued to uphold a state law that degraded a large portion of our fellow citizens.[16]

Plessy and its doctrine of "separate but equal" facilities for African-Americans was significant because it provided the "legalistic smoke screen behind which an exploitive society operated for the next six decades; for while things were separate, they were rarely, if ever, equal."[17] The Court never questioned the standard set forth in *Plessy*, but it did repeatedly ask if separate facilities were truly equal. The Court was increasingly driven to scrutinize the material equality of facilities until the case of *Sweatt v. Painter*, which was decided in 1950.[18]

Heman Sweatt, an African-American, was denied admission to the University of Texas Law School because of his race. He brought suit against school officials to compel the university to admit him. The trial court denied his request after extending the case six months, in order to give Texas time to provide a law school for African-American students. Sweatt refused to attend the new law school and continued his action against the university officials. The Texas Court of Civil Appeals affirmed the trial court's decision against him, and his subsequent application to

the Texas Supreme Court for a writ of error was denied. Sweatt proceeded to petition the U.S. Supreme Court for certiorari.[19]

Chief Justice Vinson wrote the opinion handed down by the Court. He began by comparing both the University of Texas Law School and the new university for African-Americans. The University of Texas Law School was staffed by a faculty of sixteen full-time professors, three part-time professors, and some of those members were nationally recognized authorities in their field. The student body numbered 850, and the library contained over 65,000 volumes. The school also offered its students a law review, moot court facilities, scholarship funds, and Order of the Coif affiliation. It was considered one of the nation's ranking law schools.[20] The new university for African-American students, however, had no independent faculty or library, at the time of the opening of the school, in 1947. Four members of the University of Texas Law School taught at the school, but maintained their offices in the original university. Few of the 10,000 volumes ordered for the library had arrived, and the school lacked accredidation.[21] Since the trial, the university had improved, if only fractionally.[22]

Chief Justice Vinson reasoned that the University of Texas Law School was superior to the new university for African-American students. The Court could not find substantial opportunities offered white and Negro law students by Texas. Further, the Court found it difficult to believe that a student who had a free choice between the two schools would consider the question close to even, meaning that the student would pick the University of Texas Law School.[23] In addition, Vinson wrote, "The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts."[24] Vinson reasoned that preparation for any occupation depended not only on equal facilities, but also on those intangibles such as experience that were only open to white students.

Those experiences could only be gained through interaction with others. With such a substantial segment of society excluded, the education offered to Sweatt was not substantially equal to the education that he would receive if admitted to the University of Texas Law School.[25] The Court ruled that the Equal Protection Clause of the Fourteenth Amendment required that Sweatt be admitted to the University of Texas Law School.[26]

The Supreme Court's creation of the "separate but equal" doctrine in *Plessy* remained in effect until the Supreme Court, under the direction of Chief Justice Vinson, agreed to hear the case of *Brown v. Board of Education of Topeka,* which was a bundle of five separate segregation cases.[27] The Vinson Court was deeply divided on all issues, including segregation, but had not yet decided the actual issue of segregation. "The earlier racial cases – *Sweatt* and *McLaurin* – they had managed to cope with by chipping away at the edges of Jim Crow but avoiding the real question of *Plessy*'s continued validity. The Court could no longer dodge that question, though it might continue to stall in resolving it."[28] During conference after arguments, the Justices discussed how they would vote. At its first consideration of *Brown*, the Court was undecided as to whether, how, and when it should strike down state-imposed segregation in the nation's schools. Four of the Justices – Black, Douglas, Burton, and Minton – were ready to vote in favor of ending the practice; Reed was ready to affirm; Frankfurter was ready to overturn Jim Crow schools in Washington, D.C.; Vinson and Clark were worried about the uproar of their decision and feared domestic strife; and Jackson was willing to overturn *Plessy* unless a clear majority insisted on stating that segregation had been unconstitutional all along.[29]

The Justices decided that in order to try to reconcile their differences, they would hold off on handing down a decision on *Brown* at the end of the year. The Court continued to hold discussions on the issue, and each Justice had different views on how he thought the Court stood

toward the end of the 1952 Session. At the end of the term in June, the Justices' law clerks held a luncheon and discussed the case. The clerks were willing to overturn *Plessy* and order desegregation, but they believed that the Court would be closely divided if it had announced its decision at that time.[30] Justice Frankfurter came up with a reasonable solution to the problem. Frankfurter was certain that the Court could hold off a decision until the new term. The Justices were not pushing for a decision, they had not taken a vote on the issue throughout the term, and if they could come up with some questions for discussion at reargument, the case could hold until the next term.[31] Justice Frankfurter and this clerk, Alexander Bickel, worked on questions that they felt needed to be answered before the Court rendered a decision. The questions looked in opposite directions and were worded to ensure that it was clear that the Court had not yet reached a decision. The Court unanimously voted to restore the cases to the docket for reargument the following term, and the parties to the litigation were given the questions and asked to answer them, as they were relevant to their respective cases.[32]

Chief Justice Fred Vinson was never given the opportunity to see how the cases would turn out. "In his Washington hotel apartment, Fred M. Vinson died of a heart attack at 3:15 in the morning of September 8. He was sixty-three."[33] The remaining members of the Court attended the Chief Justice's burial at his ancestral home, but they did not all grieve equally at his passing. Frankfurter hadn't much admired Vinson as either a judge or a man. Further, Frankfurter was convinced that Vinson had been the main obstacle to the Court's prospects of reaching a judicially defensible settlement to the segregation cases. In Frankfurter's opinion, Vinson's death was an act of God.[34] The only question that remained to be answered was whom President Eisenhower would nominate to replace Vinson. Eisenhower chose Earl Warren, governor of California.[35]

Warren's appointment was an interim one. Eisenhower requested that Warren be in Washington for the opening of the new term in October, since a full Court was needed to hear especially crucial cases. While some Justices were worried about the appointment, especially Frankfurter, Warren quickly won the respect of his fellow Justices.[36] Warren didn't say much at the reargument of *Brown*. Conference notes from the conference following reargument in December 1953, however, show Warren's commitment to desegregation. Warren argued that it was time for the Court to determine whether segregation was allowable in public schools. He also discussed his reasoning behind ending *Plessy*'s precedent. "The more I read and hear and think, the more I come to conclude that the basis of the principle of segregation and separate but equal rests upon the basic premise that the Negro race is inferior.[37] Further, Warren believed that if the Court abolished segregation, it must do it in a tolerant way, so as not to throw the Deep South into turmoil. "It will take all the wisdom of the Court to do this with a minimum of commotion and strife. How we do it is important. At present, my instincts and tentative feelings would lead me to say that in these cases we should abolish, in a tolerant way, the practice of segregation in public schools."[38]

Chief Justice Earl Warren delivered the opinion of *Brown v. Board of Education of Topeka I* in 1954. Warren began by stating that although the cases came from several different states, including Kansas, South Carolina, Virginia, and Delaware, and were different in facts, they were all connected by a common legal question. That justified their consolidated opinion.[39] In each of the cases, Negro children asked the courts to help them obtain admission to public schools of their community on a nonsegregated basis. Each time, the children were denied admission to schools attended by white children under laws that either required or permitted segregation based on race. The plaintiffs argued that segregation deprived them of the equal

protection of the laws under the Fourteenth Amendment.[40] In almost all of the cases, a three-judge federal district court denied action based on the "separate but equal" doctrine adopted by the Court in *Plessy v. Ferguson*, which stated that equality is accorded when the races are provided substantially equal facilities, although the facilities are separate. "The plaintiffs contend that segregated public schools are not 'equal' and cannot be made 'equal,' and that hence they are deprived of the equal protection of the laws."[41] Due to the obvious importance of the question, the Court took jurisdiction.

Chief Justice Warren further discussed the facts surrounding reargument of the case. The Court heard reargruments during the 1953 Term, which were based on the questions that Frankfurter had created for the litigation.

> Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment.[42]

The Court determined from reargument that the results were inconclusive for several reasons, including the status of public education at the time that the amendment was adopted. Further, the language of the Fourteenth Amendment had no relation to public education. The Court established the "separate but equal" doctrine and used that as a determining factor in recent cases.[43] Unlike *Sweatt v. Painter* in 1950, this case involved evidence that both Negro and white schools had been equalized, or were in the process of being equalized, with respect to buildings, curricula, and other "tangible" factors. Warren noted, therefore, that the Court's decision could not merely rest on a comparison of those tangible factors. Instead, the Court must look at the effect that segregation has on public education.[44]

Warren argued that education was the most important function of state and local governments. Because education was required to perform basic public responsibilities, and that it

was the very foundation of good citizenship, it must be offered to every citizen on equal terms. The question before the Court was as follows: "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities?"[45] The Court believed that it did. Following the logic the Court discussed in *Sweatt v. Painter*, the Court stated the damage segregation could cause to children: "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."[46]

The Court ruled that, in the field of public education, the "separate but equal" doctrine had no place. Separate facilities were inherently unequal. Further, the plaintiffs had been deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.[47] Due to the serious nature of the question and the nature of the result, the Court asked all parties involved, including the Attorney General of the United States, to return at a later date to discuss implementation. Therefore, *Brown I* declared that segregation was unconstitutional.

That same term, the Court handed down a decision in *Bolling v. Sharpe*,[48] which was a companion case to *Brown I*. The case raised a constitutional challenge to racial segregation in public schools in the District of Columbia. The Court was faced with a dilemma: "The Equal Protection Clause is directed at the states, not the federal government, yet to strike down racial segregation everywhere else in the country, but to let it persist in the nation's capital would be – to use the Court's language – 'unthinkable.'"[49] The African-American children argued that segregation deprived them of due process of the law under the Fifth Amendment. The problem that the Court faced was that the Fifth Amendment, which was applicable in the District of

Columbia, did not have an equal protection clause, as does the Fourteenth Amendment, which only applies to the states.[50] But according to the Court:

> The concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The 'equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law,' and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.[51]

The Court asserted that liberty under law couldn't be restricted except for a proper governmental objective. Segregation in public education is not related to any proper governmental objective, and therefore, it imposes a burden on Negro children within the District of Columbia that deprives them of their liberty in violation of the Due Process Clause.[52] The Court found that racial segregation in the public schools in the District of Columbia violated the Due Process Clause of the Fifth Amendment.

The following year, the Court rendered a decision in *Brown v. Board of Education of Topeka II*. The intention of this discussion was to discuss implementation of school desegregation, as the Court had decided in *Brown I*. All of the parties involved in the initial case, the United States, and the States of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas participated in the oral argument. The presentations demonstrated that substantial steps to eliminate segregation of public schools had already been taken throughout the nation.[53]

> Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles.[54]

The Court further explained that due to their proximity to local conditions, the courts that originally heard the cases could perform the judicial appraisal. In order to carry out the decrees,

the courts must be guided by equitable principles, which means that there will have to be flexibility in shaping remedies.[55]

In order to ensure that the schools are desegregating their facilities, the courts must require that the defendants make a "prompt and reasonable start toward full compliance."[56] The courts may need to consider several administrative and legal problems to ensure that the problem of racial segregation be solved. Further, the courts have the responsibility of examining the plans that school districts propose to solve the problem.[57] Finally, the cases were remanded to the several District Courts where the cases originated, and they "must take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis 'with all deliberate speed' the parties to these cases."[58]

Critics of the phrase "with all deliberate speed", including Justice Black, claimed that the phrase itself retarded, rather than advanced, the hopes of compliance. In a television interview in December 1968, Justice Black claimed, "It seems to me, probably, with all due deference to the opinion and my brethren, all of them, that it would have been better – maybe – I don't say positively – not to have that sentence."[59] The nation and the Court experienced several disappointments, delays, and frustrations following the decision in 1955. The Court, however, remained committed to desegregating schools, and it emphasized that commitment on one particular occasion three years after the 1955 decision.[60] In 1958, the Court heard arguments and rendered a decision in *Cooper v. Aaron*.[61]

In early 1958, several members of the Little Rock School Board and the superintendent of schools filed a petition in federal district court requesting a two-and-on-half-year postponement of their desegregation program. They argued that hostility to desegregation was so

deep that their high school could not offer a decent educational program. They proposed that the African-American students who had enrolled in the school in late 1957 be transferred to segregated schools.[62] This controversy arose from the Little Rock School Board attempting to comply with the Court's decisions in *Brown I* and *Brown II* and the attempt by Governor Orval Faubus, the Arkansas governor, to frustrate the implementation of the school board's desegregation program.

The plan that school officials had devised in 1955 called for complete desegregation of the entire school system by 1963. The first stage of the plan included the admission of nine African-American students to Central High School in September 1957. There were indications that the plan would succeed.

> From discussions with citizen groups, the school board was able to conclude that the large majority of citizens thought that desegregation was in the best interests of the students. The mayor believed that the police force was adequate to deal with any incidents, and up until two days prior to the opening of school, there had been no crowds gathering or threats of violence.[63]

State government officials, however, had been adopting measures that were designed to maintain school segregation. For example, in 1956, the state legislature added an amendment to the Arkansas Constitution that required the General Assembly to oppose the Supreme Court decisions in both *Brown* cases, as long as it was constitutional. In early 1957, the legislature passed several laws making attendance at racially mixed schools optional and establishing a State Sovereignty Commission. The measures came to a culmination right before the school opened. "Finally, on September 2, 1957, Governor Orval Faubus sent Arkansas National Guard units to Little Rock to prevent the nine students from attending the high school."[64] The action, which escalated the opposition of the town's citizens to the plan, prompted the school board to ask that the African-American students not attend the high school and to petition the federal

district court for further instructions. The court ordered school officials to continue their plans for desegregation, but the National Guard continued to prevent the students from attending the school.[65] Following an investigation and hearings, the district court enjoined both the governor and the National Guard from interfering with the plan. The situation only escalated further:

> On September 23, African-American students attended the high school under police protection, but were withdrawn later that day when it became too difficult for the police to control crowds that gathered around the school. Two days later, the students were once again admitted, this time under the protection of federal troops sent to Little Rock by President Dwight Eisenhower to enforce the order of the federal district court.[66]

Due to these events, the school board members petitioned the district court for the postponement. While the district court ruled in favor of the petition, the U.S. Court of Appeals for the Eighth Circuit reversed the decision on appeal. This led the school board to appeal to the Supreme Court.[67] The opinion, authored by all nine justices, was a masterpiece of judicial leadership.

The Court began by emphasizing the fact that the case involves actions by the Governor and State Legislature of Arkansas upon the premise that they are not bound by federal court orders, specifically *Brown*. The Court asserts that the holding in *Brown* was that "the Fourteenth Amendment forbids States to use their governmental powers to bar children on racial grounds from attending school where there is state participation through any arrangement, management, funds or property."[68] The Court further stated that it rejected the contentions that the Little Rock School Board's plan to completely desegregate schools be suspended until state laws were further challenged and tested in the courts.[69]

The Court continued by explaining that it accepted the findings of the District Court, which found that the progress of all students, both white and black, suffered and would continue to suffer if the conditions that prevailed the prior year were permitted to continue. The Court did

assert that the significance of the findings should be considered in light of the fact, that they conditions were directly traceable to the legislature and executive officials of Arkansas. Further, the Court emphasized that the members of the School Board and the Superintendent of Schools were local officials, and in that capacity, the Fourteenth Amendment recognizes them as agents of the State.[70] The Court also recognized that, "The record before us clearly establishes that the growth of the Board's difficulties to a magnitude beyond its unaided power to control is the product of state action. Those difficulties… can also be brought under control by state action."[71]

The Fourteenth Amendment holds that no "State" can deny to any person within its jurisdiction the equal protection of the laws. The Court elaborated by stating that because the State acts by its legislative, its executive, and its judicial authorities, the amendment means that no agency or officers that act through the State, can deny any person the equal protection of the laws.[72] "In short, the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation…"[73] The Court then examined the claim by the Governor and the Legislature that they were not bound by the Court's holding in *Brown.* The Court ruled that their claim was incorrect and cited the Supremacy Clause of Article VI of the Constitution, which states:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.[74]

The Court made it clear that, "…the responsibility for public education is primarily the concern of the States, but it is equally true that such responsibilities, like all other state activity,

must be exercised consistently with federal constitutional requirements as they apply to state action."[75] The State could not legally deny any person equal protection of the laws. Finally, the Court recognized that three new Justices had joined the Court since the 1955 decision. Those Justices, however, agreed with the other members of the Court concerning the decision, and the *Brown* decision was reaffirmed. The Court finished its opinion by stating that, "The principles announced in that decision and the obedience of the States to them, according to the command of the Constitution, are indispensable for the protection of the freedoms guaranteed by our fundamental charter for all of us."[76]

Some cases that made it all the way to the Supreme Court didn't gain the same amount of attention as others. *Goss v. Board of Education*[77] is one such case. *Goss* begins in Tennessee, when two school boards proposed desegregation plans that called for the rezoning of school districts without any reference to race. Further, each plan contained a provision under which any student would be allowed to transfer from a school where the student would be in the racial minority back to the student's original segregated school. This provision was completely based on the student's race, as well as the racial composition of the assigned school.[78] Upon further investigation, it appeared that the provision was specifically designed to move students in one direction: across racially neutral lines and back into segregated schools. African-American students challenged the validity of the plans.[79]

The Court examined the transfer plans and determined that those plans were "a one-way ticket leading to but one destination, i.e., the majority race of the transferee and continued segregation."[80] The Court further stated that any classification based on race for the purpose of transfer between public schools, as was present in the transfer plans, violated the Equal

Protection Clause of the Fourteenth Amendment. Therefore, the transfer plans promoted discrimination and were invalid.[81]

In 1964, the Court handed down a decision in *Griffin v. County School Board of Prince Edward County*.[82] In 1954, when the Court handed down its decision in *Brown I*, it decided that Virginia school segregation laws were unconstitutional and ordered that African-American students in Prince Edward County be admitted to public schools. In 1959, the county school board decided not to appropriate funds to public schools. Tax credits, however, were given for contributions to private white schools.[83] Students that attended those private schools became eligible for county and state tuition grants the following year, while public schools continued to operate throughout Virginia. The local federal court ordered that the public schools be reopened.[84]

In its opinion, the Court ruled that the closing of the Prince Edward County schools while public schools in every other county of Virginia remained open denied African-American children the equal protection of the laws.[85] The Court further recognized that, "Virginia law, as here applied, unquestionably treats the school children of Prince Edward differently from the way it treats the school children of all other Virginia counties."[86] Prince Edward County children were required to either attend a private school or none at all, while all other Virginia children were allowed to go to public schools. African-American children living in Prince Edward County are especially hurt because they have no other schools to attend; white children have the option of attending a private school. While a State does have the discretion in deciding whether certain laws will operate statewide or in only certain counties, the laws presented have one intention: to segregate white and African-American children, with regard to school. The Court stated that, "Whatever nonracial grounds might support a State's allowing a county to abandon public

schools, the object must be a constitutional one, and grounds of race and opposition to desegregation do not qualify as constitutional."[87] Finally, the Court ruled that the time for "all deliberate speed" ran out, and that certain phrase could no longer justify denying the children of Prince Edward County their constitutional rights to an equal education that was available in other parts of the state.[88]

Rogers v. Paul[89] is another case that made it to the Supreme Court, but didn't receive as much attention as some of the other cases. This case began when a school system in Arkansas adopted a desegregation plan that was known as a "grade-a-year" plan. The plan started at the lower grades, but it left some high school students attending segregated classes. Further, the African-American high school students attended a school that didn't offer the same courses as the white high school. Those African-American students challenged not only the situation, but also the division of faculty on a racial basis at every grade level.[90]

The Court began by looking at certain facts of the case. It stated that the students in the case were assigned to a Negro high school on the basis of their race. The Court reasoned: "Those assignments are constitutionally forbidden not only for the reasons stated in *Brown* … but also because petitioners are thereby prevented from taking certain courses offered only at another high school limited to white students."[91] The Court further ruled that the students had the right to question the policy regarding the allocation of faculty. That right came from two different, but related, theories. First, racial allocation of faculty denied students equality of educational opportunities. Second, it would render an upcoming constitutional desegregation plan inadequate.[92] Therefore, the Court held that the students were entitled to immediate relief and that pending a constitutional desegregation plan, those students were entitled to an immediate transfer to a school that had a more extensive curriculum.[93]

The Court continued to decide public education desegregation cases, and it followed its precedent set in *Brown II*, when it used the term "with all deliberate speed" to refer to the time needed to implement desegregation plans across the nation. This all changed when the Court heard *Alexander v. Holmes County Board of Education*.[94] The case came up for review after the Fifth Circuit Court of Appeals granted a motion allowing additional time and delayed implementation of a desegregation plan in Mississippi. An earlier order mandated desegregation in various Mississippi school districts that educated thousands of students. The delay itself was challenged.[95]

The Court held that every school district was obligated to terminate dual school systems immediately and begin to operate only unitary schools.[96] Further, the Court stated that "continued operation of segregated schools under a standard of allowing 'all deliberate speed' for desegregation is no longer constitutionally permissible."[97] The Court did, however, allow the original District Court and Court of Appeals to hear objections and proposed amendments. Although implementation could no longer be delayed, modifications and objections to the order could still be considered. Further, delays could not be granted, and all courts were required to review any amendments to desegregation plans, and those amendments should only be permitted if they strove to further the ultimate goal of desegregation.[98]

The Court continued to tackle desegregation cases, but things had begun to change. The Court now had to distinguish between the two different types of segregation: *de jure* segregation and *de facto* segregation.[99] As the Court described, "Proof of 'intent to discriminate' is critical to establishing the occurrence of *de jure* segregation, for only intentional discrimination by the state on the basis of race violates the Fourteenth Amendment."[100] It is critical to understand the limits the Court has placed on certain remedies that can be founded legally by the federal courts. Two

Supreme Court cases illustrate these limits on remedies: *Swann v. Charlotte-Mecklenburg Board of Education*[101] and *Milliken v. Bradley*.[102]

In 1971, the Court handed down a decision in *Swann v. Charlotte-Mecklenburg Board of Education*.[103] In this case, about 60% of the African-American students in a town in North Carolina still attended schools that were 99% African-American, even though 71% of all students in the system were white. Two proposed desegregation plans were created by the school board and a court-appointed expert, Dr. John Finger, and submitted to district Judge James McMilan.[104] The district court accepted a modified version of the school board's plan that involved the assignment of faculty and the redrawing of attendance zone lines that were used to assign students to various junior high schools and high schools. The court, however, approved Finger's plan, which required bussing several hundred students, as well as redrawing zone lines.[105] The school board objected to the use of buses and appealed the order. On appeal, a federal appellate court vacated that particular part of McMilan's order. He, in turn, issued a sweeping order, incorporating Finger's proposals and requiring district-wide busing.[106]

First, the Court stated that the main objective is to eliminate all vestiges of state-imposed segregation from public schools. If school authorities failed in their obligations under those holdings, judicial authority may be invoked. Further, "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad and flexible…"[107] That judicial authority, however, only enters when local authority defaults. Second, the Court tackled four major issues that were central to the case. 1) Remedial plans were to be judged by their effectiveness. Further, the very limited use of mathematical ratios or quotas are good 'starting points' for solutions; 2) predominately African-American or exclusive African-American schools, such as those in the case, should be scrutinized very carefully to

ensure that they are not segregated schools;[108] 3) the pairing and grouping of noncontiguous school zones is a permissible tool; and 4) no rigid guidelines can be established concerning the busing of students to particular schools.[109] As is evident in *Swann*, the Court understood that "it may be necessary for a district court to require busing in the achievement of racial balance among schools afflicted with *de jure* segregation so as to effectively dismantle a dual educational system."[110]

The Court, however, treated the case of *Milliken v. Bradley*[111] in 1974 differently. Ronald Bradley, along with several other African-American students, and the Detroit branch of the NAACP brought a suit against Governor Milliken, the state board of education, state officials, and the city school board and superintendent. They alleged that racial segregation was present in the operation of the public school system, specifically in the drawing of school district boundaries. The challenge was upheld by a federal district court, which ordered the school board to formulate desegregation plans for the school system and ordered state officials to design arrangements for a unitary system of education for the metropolitan area.[112] The court also allowed some 85 surrounding school districts, not found to be engaged in unconstitutional actions, to appear and present arguments that was relevant to forming a regional plan for racial balance in the schools.[113] "What was in question was the constitutionality of the court-ordered desegregation plan extending to outlying districts with no history of segregative action on the part of their school boards or local governments."[114]

A divided Court ruled that it appeared that the District Court and the Court of Appeals moved the focus from a Detroit remedy to a metropolitan area because they concluded that complete desegregation of Detroit would not produce a desirable racial balance.[115] Chief Justice Burger, the author of the decision, stated that the dissenting Justices viewed the existence of a

dual system in Detroit could be made the basis for a decree that required cross-district transportation. Chief Justice Burger argued against that view could not be supported "on the grounds that it represents merely the devising of a suitably flexible remedy for the violation of rights already established by our prior decisions."[116] The Court, therefore, ruled, "it was improper to impose a multidistrict remedy for single-district *de jure* segregation ..."[117] Without any evidence that the other districts had failed to operate a unitary system and that the boundary lines had been drawn to foster racial segregation, the Court stated that an interdistrict remedy was not constitutionally justified or required.[118]

Milliken, unlike quite a few of the important desegregation cases, was not unanimous. Justices White, Douglas, Brennan, and Marshall all dissented from the opinion. As they pointed out in their dissent, "a remedy so limited – in that case, one limited to redrawing attendance zones and busing solely within the Detroit city limits – will become less and less meaningful, given that urban areas are increasingly populated by African-Americans, encircled by largely all-white suburbs."[119]

Another case that divided the Court was *Washington v. Seattle School District No. 1*,[120] which was decided in 1982. In 1978, Seattle adopted a desegregation plan that used mandatory busing, which was quite extensive. A few months following the adoption of the plan, the voters of Washington voted to adopt a plan to terminate mandatory busing in order to ensure racial integration. This prohibited school boards from assigning students to any school other than the one that was geographically closest to their home. As part of the plan, racial balance was not one of the seven permissible exceptions. Seattle and two other districts joined in a suit against the state, claiming that the proposed plan violated the Equal Protection Clause of the Fourteenth Amendment.[121]

Justice Blackmun, writing the opinion for the divided Court, held that the proposed plan did violate the Equal Protection Clause of the Fourteenth Amendment.[122] The Court stated that the proposed plan, our Initiative 350, must be overturned because it did not attempt to distribute governmental power based on any general principle. As the Court pointed out, "Instead, it uses the racial nature of an issue to define the governmental decisionmaking structure, and thus imposes substantial and unique burdens on racial minorities."[123] The Court did point out that busing for integration gave rise to more controversy. In the absence of a constitutional violation, however, the success of school desegregation were now matters of the legislative process.[124]

Along with Supreme Court decisions, the other branches of the federal government were acting. On June 19, 1963, President John F. Kennedy relayed a special message to Congress. In this message, the President requested that Congress remain in session until it had created a bill that Kennedy called the Civil Rights Act of 1963.[125] Kennedy further asked the Congress not only to include provisions on voting rights and the Civil Rights Commission, but also legislation guaranteeing equal access to public accommodations and non-discrimination in federally assisted programs. Unfortunately, the first session of the Congress took no real action on the measure.[126] Kennedy's assassination in November 1963 changed the outcome of the Civil Rights Act of 1963, especially what provisions the act contained.

President Johnson succeeded President Kennedy after Kennedy's assassination in November 1963. President Johnson's attitude toward civil rights drastically changed from the time when he was a senator. As a senator, Johnson had expressed contempt for those who wanted to achieve racial equality through legislation. Johnson knew, however, that he needed to change his stance on civil rights if he wanted to win re-election in 1964. Therefore, Johnson gave top priority to civil rights. "'Let this session of Congress,' he said in his first State of the Union

message, 'be known as the session which did more for civil rights than the last hundred sessions combined.'"[127] Johnson was a powerful Senator during his years in the Senate, but he was even more powerful as President. Johnson had the vast resources of the highest office at his disposal, and he ardently fought for a strong civil rights law.[128] President Johnson greatly expanded President Kennedy's version of the Civil Rights Act of 1963, but only on certain titles.

The most important provision for racial equality within the act comes from Title II. President Kennedy simply wanted to ensure that all citizens had equal access to public facilities. President Johnson expanded this provision: it barred racial discrimination in all public facilities, if their operations affected commerce.[129] This strengthened the impact of the provision, since now Congress could enforce it through its power to regulate commerce granted by Article I, Section 8 of the Constitution. Further, Kennedy's version of the bill had avoided any mention of employment discrimination, something that the House Judiciary Committee added during its conferences. This added provision ultimately became Title VII of the Civil Rights Act of 1964.[130] Further, President Kennedy had requested that a provision on school desegregation and federally funded programs appear in the act, but Johnson's leadership made the request a reality.

In 1964, under the leadership of President Lyndon B. Johnson, Congress enacted the Civil Rights Act of 1964. The act contains eleven titles, one of which deals specifically with school desegregation, Title IV. Section 401 defines terms that would be used throughout the particular section. Sec 402 allowed the Education Commissioner to conduct a survey within two years of the enactment of the title, which concerned the lack of availability of equal educational opportunities for individuals due to their race, color, religion, or national origin.[131] Section 403 allowed the Commissioner to provide technical assistance to applicants in the preparation, adoption, and implementation of plans for the desegregation of public schools.[132] Section 404

authorizes the Commissioner to create either short-term or regular training sessions designed to improve the ability of teachers and other school personnel to deal with special education problems that are a result of desegregation.[133] Section 405 allows the Commissioner to make grants to school boards to pay for inservice training for teachers and other school personnel in dealing with desegregation problems and to employ specialists to advise teachers during those problems.[134] Section 406 deals with payments for a grant may be made either in advance or through reimbursement.[135] Section 407 allows the Attorney General to initiate and maintain appropriate legal proceedings in the event that he receives a signed complaint from a parent or group of parents whose children are being deprived of the equal protection of the laws, as well as those who are denied admission to a university based on their race, color, religion, or national origin.[136]

The impact of Title IV of the Civil Rights Act of 1964 became apparent quickly. At the time of the debate on the legislation, almost two-thirds of segregated school districts had still not given African-American children their constitutional rights.[137] Title IV of the act enabled the federal government to bring suits in court for school desegregation. The bill simply implemented the law that was interpreted by the Supreme Court and ensured that all citizens enjoyed their constitutional rights.[138] The bill, however, did not guarantee racial balance in the nation's schools; it only ensured that schools would no longer remain segregated. The bill did not provide any plan to ensure that schools would not be affected by *de facto* segregation, only *de jure* segregation. Title VI of the bill was also an important and powerful tool for legislatures in a different way.

Title VI of the Civil Rights Act of 1964 deals with federally funded programs.

> In Title VI, Congress has made a broad use of such power by providing that there is to be no racial discrimination in any program receiving federal financial

> assistance. More important, Title VI goes on to provide that compliance with the nondiscrimination requirement is to be effected by the termination of or refusal to grant federal funds to any recipient who has been found guilty of any racial discrimination.[139]

The concept is genius, since Congress is essentially using its "power of the purse" to ensure that racial discrimination is gone. Sections 601 and 602 of Title VI deal with desegregation. Section 601 asserts that no person living in the United States shall be denied participation in, denied the benefits, or suffer discrimination in any program that receives federal financial assistance, based on their race, color, or national origin.[140] Section 602 went a bit further. "Section 602 of the Act authorized Federal departments and agencies to issue 'rules, regulations, or orders of general applicability' to implement the purposes of the statute."[141] These Sections, as well as others, led the U.S. Office of Education to issue a Statement of Policies for School Desegregation, also known as 'guidelines'.[142]

Title VI was created to ensure that all citizens of the United States, regardless of their race, color, or national origin, who wanted federal financial aid, would receive it. Those opposing the bill claimed that it would permit the federal government to control all facets of education and broad aspects of everyday life. Supporters disagreed and argued that the bill would only ensure that which it stated, and it would not permit the federal government to control the contents of any educational program.[143] The main impact that Title VI had on education was that any schools that requested federal financial assistance had to prove that it was desegregated. If the school could not prove that it was desegregated or on the way to desegregation, that school would receive no federal financial assistance. This effectively forced schools to develop and implement desegregation plans quickly and efficiently.

In order to implement the Title VI mandate of the Civil Rights Act of 1964, the Department of Health, Education, and Welfare was asked to prepare certain "guidelines". These

guidelines have two purposes: "(1) to indicate to local and state authorities what is necessary for compliance with federal law; (2) they bind the agency in this one aspect of the determination of eligibility for federal funds."[144] These guidelines have been given substantial weight by the courts in dealing with issues of desegregation. Among those guidelines established by the HEW, the fall of 1967 was set as the target date for total desegregation of all grades.[145]

In 1966, the Fifth Circuit Court of Appeals rendered a decision in *United States v. Jefferson County Board of Education*.[146] In this case, the Circuit Court had to review desegregation plans to ensure that they met constitutional standards, as well as the new standards set forth in the Civil Rights Act of 1964 and the guidelines established by the United States Office of Education, Department of Health, Education, and Welfare (HEW).[147] The Appeals Court claimed that the guidelines offered new hope to African-American children who had previously been denied their constitutional rights. The Appeals Court also discussed the HEW guidelines in more depth.

> HEW Guidelines are based on decisions of this and other courts, are formulated to stay within the scope of the Civil Rights Act of 1964, are prepared in detail by experts in education and school administration, and are intended by Congress and the executive to be part of a coordinated national program. The Guidelines present the best system available for uniform application, and the best aid to the courts in evaluating the validity of a school desegregation plan and the progress made under that plan.[148]

The Court of Appeals then turned to the question of whether or not the HEW Guidelines are within the scope of congressional and executive policies set forth in the Civil Rights Act of 1964.[149] The Appeals Court held that they were and explained that one of the first "guidelines" set forth was the time requirement for total desegregation throughout the nation. "These *Guidelines* fixed the fall of 1967 as the target date for total desegregation of all grades."[150] Continuing through its opinion, the Appeals Court explained how the Guidelines fell within the

scope of the policies set forth within the Civil Rights Act of 1964 and further claimed what the Guidelines do not entail:

> The HEW Guidelines agree with decisions of this circuit and of the similarly situated Fourth and Eighth Circuits. And they stay within the Congressional mandate. There is no cross-district or cross-town bussing requirement. There is no provision requiring school authorities to place white children in Negro schools or Negro children in white schools for the purpose of striking a racial balance in a school or school district proportionate to the racial population of the community or school district.[151]

The main component of the Guidelines is to ensure that schools are implementing approved desegregation plans in a timely fashion. Although this was not a Supreme Court case, I believe the case needed to be included in my research since its contents dealt strictly with HEW Guidelines as they pertained to school desegregation.

Congress is in charge of writing laws, the Executive Branch is in charge of enforcing the laws, and the Supreme Court is in charge of interpreting the laws. The power of judicial review that the Supreme Court possesses came from their decision in *Marbury v. Madison*,[152] which means that the Supreme Court has the power to review laws and determine their constitutionality. The now famous case also illustrated the power behind the Supreme Court itself. We have seen, however, that whatever "power" the Supreme Court may have, is figurative, not literal. The Supreme Court may interpret the laws of our nation, but it is up to the other branches of the federal government, the legislature and the executive, as well as the states themselves, to implement those laws. More specifically, the President and the rest of the Executive Branch, has the most power and the best chance of enforcing the decisions of the Supreme Court.

The President and the rest of the Executive Branch have the power of the nation. He initiates policy to suit his campaign goals, but he can't make laws himself. Nor can he interpret

them. The only thing that the President is allowed to do is enforce those laws, as well as the decisions of the Supreme Court. This power is most evident during the fight for desegregation, especially during Eisenhower and Kennedy's presidencies. Following the decision rendered in *Brown II*, the governor of Arkansas ordered the National Guard to not allow the African-American students to enter the high school. In order for the students to enter the high school, President Eisenhower sent federal troops down to Little Rock to escort the students inside the building. State officials in Arkansas attempted to disobey the order from the Supreme Court, and it took action from the President of the United States to force the state to comply with the Court's order. Kennedy and his predecessor, Johnson, pushed the Civil Rights Act of 1964 through Congress to ensure that no person living in the United States would be denied equal protection of the laws.

The legislature is also responsible for enforcing the Supreme Court's decisions. If one of the laws of our nation is deemed unconstitutional, it is up to Congress to re-write the law to make sure that it is compliance with the Constitution. Congress even wrote the Civil Rights Act of 1964, which made it illegal to discriminate against someone based on his race, color, religion, or national origin. Further, Congress may create institutions and federal organizations in order to ensure that the nation is complying with the Court's orders. This is evident in Title IV and Title VI of the Civil Rights Act of 1964, as well as the creation of the HEW Guidelines.

Perhaps the most interesting agents of the Supreme Court in enforcing its decisions are the states themselves. Every state has its own Constitution and its own laws. Congress, however, can supersede those laws by amending the U.S. Constitution, which the states must also follow. The incident in Arkansas in 1957 is evidence enough about the kind of power that the states possess. The governor used his constitutional power given to him by the Arkansas Constitution

to call in the National Guard to ensure that the African-American students were not permitted to enter the high school. That power was overshadowed by presidential power. President Eisenhower used his power to send federal troops into Arkansas to make sure that the state complied with the Court's decision. That incident alone shows just how far the states can use their own power. It took intervention on the national executive level to force compliance.

The Supreme Court attempted to initiate social policy when it declared that segregation was unconstitutional. Its decisions don't implement themselves: that is the responsibility of the other two branches of the federal government, the executive and the legislature, as well as the states. The following passage illustrates this idea perfectly:

> Compliance, however, was dependent upon the continued and aggressive support of others: Presidents like Kennedy and Johnson, ready and willing to send in federal marshals or troops to force compliance; an active Attorney General like Robert Kennedy, persistently filing suits against segregated districts; a federal agency like HEW, willing to cut off federal school aid to noncomplying areas; ever-present interest groups such as the NAACP, which provided financial help, lawyers, and research support to black plaintiffs bringing suit to challenge segregated facilities; and a lower federal judiciary whose members had to withstand enormous community pressures.[153]

The Supreme Court is a powerful entity. Part of our system of federal government, however, ensures that no one branch of the government becomes too strong. That's called checks and balances. The three federal branches of the government check each other and balance each other in order to ensure that no one branch becomes too powerful. That aspect of our federal government is important and essential, but it is also detrimental, especially in this instance. I have shown that the Supreme Court's power only extends so far before it must rely on other branches of our government.

Federal agencies, special interest groups, and lower federal courts must cooperate with each other in order for desegregation to succeed. Throughout this paper, I have attempted to

show that desegregation is still an issue in this country. The Supreme Court declared school segregation unconstitutional in 1954, but I have shown that the nation continues to debate the issue. *De jure* segregation may have been deemed unconstitutional, but *de facto* segregation is still a problem in some areas of our country. Our own intolerance is the reason for that existence. The only way for the nation to completely move forward and finally live together in harmony is for us to set aside our differences and work together. School segregation is unconstitutional. The Supreme Court declared that mandate. Now the States and the federal executive and legislature must enforce that mandate.

Notes

[1] *Brown v. Board of Education of Topeka I*, 347 U.S. 483 (1954).

[2] *Cooper v. Aaron*, 358 U.S. 1 (1958).

[3] Bernard Schwartz, ed. *Statutory History of the United States: Civil Rights Part II.* (New York: McGraw-Hill, 1970).

[4] "De facto Segregation." Def. *Black's Law Dictionary* (1979) 375.

[5] "De jure Segregation." Def. *Black's Law Dictionary* (1979) 383.

[6] U.S. Constitution. Amendment XIV.

[7] *Brown*, 247 U.S. 483 (1954).

[8] *Plessy v. Ferguson*, 163 U.S. 537 (1896).

[9] Craig R. Ducat. *Constitutional Interpretation*. (California: Wadsworth/Thomson Learning, 2000) 1193.

[10] *Plessy v. Ferguson*, 542.

[11] *Ibid* 544.

[12] *Ibid* 550-51.

[13] *Ibid* 551.

[14] *Ibid.*

[15] *Ibid* 555.

[16] *Ibid* 564.

[17] Ducat 1197.

[18] *Ibid.*

[19] *Ibid* 1198.

[20] *Sweatt v. Painter*, 339 U.S. 629 (1950). 633.

[21] *Ibid.*

[22] *Ibid.*

[23] *Ibid* 634.

[24] *Ibid.*

[25] *Ibid.*

[26] *Ibid* 636.

[27] Richard Kluger. *Simple Justice: The History of* Brown v. Board of Education *and Black America's Struggle for Equality*. (New York: Knopf, 1980). 585.

[28] *Ibid* 585.

Kluger also cites the *McLaurin* case in his Index of Principal Cases Cited as: *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U.S. 637 (1950).

[29] *Ibid* 613.

[30] *Ibid* 614.

[31] *Ibid* 614.

[32] *Ibid* 615.

[33] *Ibid* 656.

[34] *Ibid* 656.

[35] *Ibid* 657.

[36] *Ibid* 667.

[37] Del Dickson. *The Supreme Court in Conference (1940 – 1985): The Private Discussions Behind Nearly 300 Supreme Court Decisions*. (Oxford: Oxford University Press, 2001) 654.

[38] *Ibid* 654.

[39] *Brown v. Board of Education of Topeka I*, 486.

[40] *Ibid* 488.

[41] *Ibid.*

[42] *Ibid* 489.

[43] *Ibid* 491.

[44] *Ibid* 492.

[45] *Ibid* 493.

[46] *Ibid* 494.

[47] *Ibid* 495.

[48] *Bolling v. Sharpe*, 347 U.S. 497 (1954).

[49] Ducat 1205.

[50] *Bolling v. Sharpe*, 499.

[51] *Ibid.*

[52] *Ibid* 500.

[53] *Brown v. Board of Education of Topeka II*, 349 U.S. 294 (1955). 299.

[54] *Ibid.*

[55] *Ibid* 300.

[56] *Ibid.*

[57] *Ibid* 300-01.

[58] *Ibid* 301.

[59] Ducat 1208.

[60] *Ibid* 1208.

[61] *Cooper v. Aaron,* 358 U.S. 1 (1958).

[62] *Ibid* 1208.

[63] *Ibid* 1208-09.

[64] *Ibid* 1209.

[65] *Ibid* 1209.

[66] *Ibid* 1209.

[67] *Ibid* 1209.

[68] *Cooper v. Aaron*, 4.

[69] *Ibid.*

[70] *Ibid* 15.

[71] *Ibid* 16.

[72] *Ibid* 17.

[73] *Ibid.*

[74] U.S. Constitution. Article VI.

[75] *Cooper v. Aaron*, 19.

[76] *Ibid* 19-20.

[77] *Goss v. Board of Education*, 373 U.S. 683 (1963).

[78] Perry A. Zirkel, et al. *A Digest of Supreme Court Decisions Affecting Education.* (Bloomington: Phi Delta Kappa Educational Foundation, 2001) 139.

[79] *Ibid.*

[80] *Goss v. Board of Education*, 687.

[81] *Ibid* 687-88.

[82] *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964).

[83] Zirkel 139.

[84] *Ibid.*

[85] *Griffin v. County School Board of Prince Edward County*, 225.

[86] *Ibid* 230.

[87] *Ibid* 231.

[88] *Ibid* 234.

[89] *Rogers v. Paul*, 382 U.S. 198 (1965).

[90] Zirkel 140-41.

[91] *Rogers v. Paul*, 199.

[92] *Ibid* 200.

[93] *Ibid.*

[94] *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969).

[95] Zirkel 144.

[96] *Alexander v. Holmes County Board of Education*, 20.

[97] *Ibid.*

[98] *Ibid* 21.

[99] Ducat 1212.

[100] *Ibid.*

[101] *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

[102] *Milliken v. Bradley*, 418 U.S. 717 (1974).

[103] *Swann v. Charlotte-Mecklenburg Board of Education*, 1.

[104] Ducat 1213.

[105] *Ibid.*

[106] *Ibid.*

[107] *Swann v. Charlotte-Mecklenburg Board of Education*, 15.

[108] *Ibid* 25-6.

[109] *Ibid* 30.

[110] Ducat 1212.

[111] *Milliken v. Bradley*, 1.

[112] Ducat 1219.

[113] *Ibid* 1219-20.

[114] *Ibid* 1220.

[115] *Milliken v. Bradley*, 739-40.

[116] *Ibid* 747.

[117] *Ibid* 717.

[118] *Ibid* 748-49.

[119] Ducat 1212.

[120] *Washington v. Seattle School District No. 1*, 458 U.S. 457 (1982).

[121] Zirkel 184-85.

[122] *Washington v. Seattle School District No. 1*, 457.

[123] *Ibid* 470.

[124] *Ibid* 474.

[125] Schwartz 1055.

[126] *Ibid* 1017.

[127] *Ibid* 1018.

[128] *Ibid.*

[129] *Ibid.*

[130] *Ibid* 1020.

[131] *Ibid* 1027-28.

[132] *Ibid* 1028.

[133] *Ibid.*

[134] *Ibid* 1029.

[135] *Ibid.*

[136] *Ibid.*

[137] *Ibid* 1104.

[138] *Ibid.*

[139] *Ibid* 1019.

[140] Alexander Kern, et al. *Public School Law: Cases and Materials*. (St. Paul: West Publishing Co., 1969) 681-2.

[141] *Ibid* 682.

[142] *Ibid.*

[143] Schwartz 1104.

[144] Kern 682.

[145] *Ibid.*

[146] *United States v. Jefferson County Board of Education*, 372 F.2d 836. U.S. Court of Appeals, Fifth Circuit (1966).

This is a secondary source from *Westlaw Campus Research.* All page numbers are based on the *Westlaw Campus Research* database.

[147] *Ibid* 22.

[148] *Ibid* 25.

[149] *Ibid* 35.

[150] *Ibid* 29.

[151] *Ibid* 65.

[152] *Marbury v. Madison,* 5 U.S. (1 Cranch) 137 (1803).

[153] Ducat 1208.

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